



**Notice of Proposed Amendments to
Local Rules of Civil Procedure
and
Administrative Procedures for Electronic Filing in
Civil and Criminal Cases**

Civil Rule 5.1 of the Local Rules of Procedure for the United States District Court, Southern District of Texas, is proposed to be amended to require electronic filing in civil and criminal cases, effective January 1, 2007:

Proposed Local Rule 5.1.

Except as expressly provided or in exceptional circumstances, the Court will accept for requires filing documents being filed to be submitted, signed or verified by electronic means that comply with the procedures established by the Court. The notice of electronic filing that is automatically generated by the Court's electronic filing system constitutes service of the document on those registered as filing users of the system.

The Administrative Procedures for Electronic Filing in Civil and Criminal Cases is proposed to be amended to require electronic filing in civil and criminal cases, effective January 1, 2007 (Proposed Amended Procedures attached).

Written comments on the proposed amendments may be addressed to the Court by October 19, 2006, as follows:

Clerk, U.S. District Court
Attn: Local Rules/Administrative Procedures
Room 5401
P.O. Box 61010
Houston, TX 77208

Dated: September 18, 2006

Attach: Administrative Procedures (Draft - September 15, 2006)

United States District Court
Southern District of Texas

P R O P O S E D
Administrative Procedures for Electronic Filing
in Civil and Criminal Cases
January 1, 2007

1. Scope of Electronic Filing

- A. These procedures are intended to facilitate electronic filing and do not supersede any federal or local rules of procedure.
- B. All civil and criminal cases are covered by the Electronic Filing System.
 - (1). Civil Cases. Except as expressly provided or in exceptional circumstances, a Filing User is required to file electronically all complaints, initial papers, petitions, motions, memoranda of law, briefs, and other pleadings and documents filed with the court in connection with a civil case.
 - (2). Criminal Cases. Except as expressly provided or in exceptional circumstances, a Filing User is required to file electronically all petitions, motions, memoranda of law, briefs, and other pleadings and documents filed with the court in connection with a criminal case. The charging documents, including the complaint, information, or indictment, must be filed either in the traditional

manner in paper form or as electronic documents that contain an image of any legally required signature.

C. A Filing User filing a scanned document must verify the legibility of the document.

D. A non-Filing User is not required to electronically file pleadings and other papers in a case assigned to the System.

E. Pleadings and other papers not electronically filed (conventional filings) will be scanned by the Clerk's Office and will become part of the electronic record, unless a request to seal the documents is pending or the documents have been ordered sealed. After scanning conventional filings, the Clerk will retain them in one master file by date of filing for one (1) year, at which time they will be destroyed. The electronic record is the official Court record.

2. Eligibility, Registration, Passwords

A. Attorneys admitted to the bar of this Court, as well as those admitted *pro hac vice*, are required to register as Filing Users of the Court's Electronic Filing System. The registration form prescribed by the Clerk requires s the Filing User's name, address, telephone number, internet e-mail address, and a declaration that the attorney is admitted to the bar of this Court or admitted *pro hac vice*. Registration as a Filing User constitutes consent to electronic service of all documents as provided in these procedures and in accordance with Rule Fed. R. Civ. P. 5(b)(2)(D) and Fed. R. Crim. P. 49(b).

B. Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and must **immediately** notify the Clerk if their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

C. An attorney may seek from the presiding Judge an exemption from being a Filing User upon a finding of exceptional circumstances.

3. Consequences of Electronic Filing

A. Electronic transmission of a document to the Electronic Filing System consistent with these procedures, together with the transmission of a Notice of Electronic Filing issued by the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil and Criminal Procedure and the Local Rules of this Court, and constitutes entry of the document on the docket kept by the Clerk of Court under Fed. R. Civ. P. 58 and 79, and Fed. R. Crim. P. 49 and 55.

B. When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing issued by the Court.

- C. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight, Central Time Zone, in order to be considered timely filed that day, unless otherwise ordered.

4. Entry of Court-Issued Documents

- A. All orders, decrees, judgments, and proceedings of the Court will be filed in accordance with these procedures and will constitute entry on the docket kept by the Clerk of Court under Fed. R. Civ. P. 58 and 79, and Fed. R. Crim. P. 49 and 55. All signed orders will be filed electronically. Any order or other court-issued document filed electronically without the original signature of a Judge or Clerk has the same force and effect as if the Judge or Clerk physically signed a paper copy.
- B. A civil case summons may be signed, sealed and issued electronically, although a party may not serve any summons electronically. The Court may issue a criminal case warrant or summons electronically, but it must be served in accordance with Fed. R. Crim. P. 4(c).
- C. A proposed order for electronically filed motions must be filed as an electronic attachment to the motion, unless otherwise directed by the presiding Judge.
- D. Transcripts of court proceedings will be filed electronically by court reporters and transcribers.

5. Attachments and Exhibits

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the presiding Judge permits conventional filing. A Filing User may submit as exhibits or attachments only those excerpts of the referenced documents that are material to the matter under consideration. The source and page numbers of excerpted material must be clearly and prominently identified, and the length of the full source document must be disclosed. Responding parties may timely file such additional excerpts or complete documents as they believe are material. The presiding Judge also may require parties to file additional excerpts or the complete document.

6. Sealed Documents

- A. A motion requesting that documents be placed under seal and those documents may not be filed electronically. The conventionally-filed motion and documents will not be scanned pending a ruling on the motion.
- B. A court order authorizing the filing of documents under seal may be filed electronically unless otherwise ordered by the presiding Judge. Documents ordered filed under seal will be retained in the court records only in conventional form.
- C. A paper copy of the order sealing the documents must be attached to the documents under seal.

7. Document Format and Size Limitations

- A. Parties are strongly encouraged to file text-only documents in electronically created format, not in scanned form.
- B. The current size limitation for electronically filed documents, including exhibits or attachments, is 3 megabytes. While this limit will not likely affect electronically created documents, in the case of scanned documents it would be the equivalent of approximately 40 pages. Larger scanned documents must be separated into 3 megabyte sections. As technology develops in the future, the Court periodically will publish technical instructions governing the electronic filing of unusually voluminous pleadings, attachments, and exhibits.
- C. Any Filing User encountering technical difficulties electronically filing voluminous documents may choose to file them conventionally.

8. Signatures and Retention Requirements

- A. The user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of Fed. R. Civ. P. 11, the Federal Rules of Criminal Procedure, the Local Rules of this Court, and any other purpose for which a signature is required in connection with court proceedings. Electronically filed documents must include a signature block in compliance with Local Rule 11.3.A. The Filing User under whose log-in and password the

document is submitted must include an “s/” and the Filing User's typed name in the space where the signature would otherwise appear.

B. Each password is personal to the Filing User, who shall not permit that password to be used by anyone, including other attorneys, other than an authorized agent of the Filing User.

C. Documents containing multiple persons' signatures.

(1). A Filing User who electronically files any document requiring the signature of another individual must either (a) submit a scanned document containing all the necessary signatures inserted by hand; or (b) indicate all persons' signatures on the original document by including on the filed document the designation “s/” followed by each other individual's typed name.

(2). A document containing the signature of a defendant in a criminal case must be filed in a scanned format that contains an image of the defendant's signature.

(3). Original documents containing original signatures of persons other than the Filing User must be retained by the Filing Users until expiration of three years after the time for all appeals in the case.

(4). A designation on a document that one person has affixed another person's signature “by permission” may be used under circumstances when signing by permission would be acceptable on a conventionally filed document.

9. Service of Documents by Electronic Means

- A. The Notice of Electronic Filing that is automatically generated by the Court's Electronic Filing System constitutes service of the filed document on Filing Users. A Filing User may also notify another Filing User of electronically filed documents by other means (*e.g.*, fax, mail, personal delivery), but the service date will still be determined by the Notice of Electronic Filing. Parties who are not Filing Users must be served with a paper copy of any electronically filed document in accordance with the Federal Rules of Civil and Criminal Procedure, and the Local Rules of this Court..
- B. A certificate of service must be included with all documents filed electronically, reflecting that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing and indicating how service was accomplished on any party or counsel who is not a Filing User.
- C. If the Court's Electronic Filing System indicates that a Notice of Electronic Filing has not been successfully transmitted to an intended recipient, the Clerk will promptly notify the Filing User who originated the filing so that other service must be attempted. *See* Fed. R. Civ. P. 5(b)(3); Fed. R. Crim. P. 49(b).

10. Notice of Court Orders and Judgments

A. Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the Clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing.

B. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed. R. Civ. P. 77(d) and Fed. R. Crim. P. 49(c). The Clerk also will give notice by facsimile transmission of the entry of orders and judgments to Filing Users, and must send a copy of orders and judgments by first-class mail to unrepresented persons or to attorneys who have not registered for notice by facsimile transmission or electronic service in accordance with the Federal Rules of Civil and Criminal Procedure, and the Local Rules of this Court.

11. Technical Failures

A Filing User whose electronic filing is or would be made untimely as the result of a technical failure may seek appropriate relief from the presiding Judge in the case.

12. Public Access and Confidentiality

A. A person may review at the Clerk's Office filings that have not been sealed by the Court. A person also may access the Electronic Filing System at the Court's internet site, www.txs.uscourts.gov, by obtaining a PACER log-in and password. A person who has PACER access may retrieve docket

sheets and documents; however, some restrictions may apply to certain types of cases or records.

- B. Anyone may purchase paper copies, including certified and exemplified copies of electronically filed documents from the Clerk by requesting the copy in person or mailing the request to the Clerk. Each request must designate the case number and document by title or docket entry number. Requests submitted by mail must include a self-addressed, stamped return envelope and the applicable fee provided in 28 U.S.C. §1914.
- C. Until such time as the Judicial Conference policy regarding internet accessibility to court transcripts is implemented, transcripts electronically filed by court reporters and transcribers will be filed as a private entry available for viewing only by internal court users and at the public access terminals in the clerk's office.
- D. Until superseded by proposed Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1, effective December 1, 2007, all filers must comply with the provisions of General Order No. 2004-11, entitled Protecting Personal Privacy in Public Case Files, and must refrain from including or, where inclusion is necessary, partially redact the following personal identifiers from electronic and conventional filings with the Court:
- (1) Social Security Numbers. If an individual's social security number must be included in a pleading, only the last four digits of that number may be used.

- (2) Names of minor children. If the name of a minor must be mentioned, only the initials of that child may be used.
- (3) Dates of birth. If an individual's date of birth must be included in a pleading, only the year may be used.
- (4) Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers may be used.
- (5) Home addresses to the city and state. If a home address must be included, only the city and state may be listed.